IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

Crl.MC.No. 496 of 2007()

CC.1014/2004 of JUDL.MAGISTRATE OF FIRST CLASS-III, KOTTAYAM

.....

PETITIONER: ACCUSED:

LALITHA RAMACHANDRAN,
VALIAKIZHAKKETHIL HOUSE, CHENITHALA P.O.,
MAVELIKKARA, ALAPPUZHA DISTRICT.

BY ADV. SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

RESPONDENTS:

---

1. M/S.SHAN FINANCIERS,
KOTTAYAM BRANCH, REPRESENTED BY ITS POWER OF
ATTORNEY HOLDER T.J.THOMAS,
KUNCHILAYIL HOUSE, PAZHOOR P.O.,
PAPPATHY, ERNAKULAM.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M. KAMAPPU.
SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 496 OF 2007

Dated this the 29th day of March, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.138 of the N.I. Act. The petitioner has come before this Court with the grievance that cognizance has been taken without legal authority inasmuch as the petition is barred by limitation. Cognizance was taken on the basis of a complaint dated 14/4/04. Notice of demand was served on 9/2/04. The petitioner contended that the payment must have been made within 15 days of receipt of the notice i.e., 9/2/2004. The cause of action arises after 15 days and the complaint must have been within one month. In any view of the matter, the complaint must have been filed by 24/3/04 (i.e., 9/2/04 + 15 days + one month).

2. Notice was given to the respondent/complainant. The respondent/complainant has entered appearance through counsel. Report of the learned Magistrate was also called for.

The report of the learned Magistrate shows that an order has been passed condoning the delay of 26 days in filing the complaint. A copy of the order has also been furnished. The order dated 12/7/04 in C.M.P.No.1895/04 shows that the delay of 26 days in filing the complaint was condoned by the learned Magistrate without notice to the accused/the petitioner herein. The report of the learned Magistrate also shows that the delay was condoned without and before giving notice to the accused to raise his objections against the prayer for condonation of delay.

3. Obviously and transparently, the procedure adopted by the learned Magistrate is not correct. The complaint is barred by limitation. Of course, the delay can be condoned by the learned Magistrate now. But before condonation of delay, the accused is certainly entitled to be heard. There is no specific provision under Sec.142(b) of the N.I. Act to order notice to the accused before the delay is condoned. But, it is by now trite that the right to be heard before the delay is condoned is an incident of the principles of natural justice and even when the

Statute is silent, all interstitial spaces must be filled and rule of natural justice must be read into all statutes. So reckoned, the order dated 12/7/04 in C.M.P.No.1895/04 is obviously unsustainable. The same deserves to be set aside.

4. In the result:

(a) This Crl.M.C. is allowed in part.

(b) The order dated 12/7/04 in C.M.P.No.1895/04 passed by the learned Magistrate and the consequent cognizance taken are set aside.

(c) But it is directed that the learned Magistrate must dispose of C.M.P.No.1895/04 afresh after giving the petitioner herein an opportunity to be heard.

(d) The parties shall appear before the learned Magistrate without waiting for any further notice from the learned Magistrate on 16/4/07 to continue the proceedings. The learned Magistrate shall, after hearing both sides, pass appropriate orders afresh in C.M.P.No.1895/04 and take appropriate decision on the question of cognizance.

5. I may hasten to observe that I have not intended to express any opinion on merits on the acceptability of the claim of the complainant to get the delay condoned or on the question of cognizance being taken. The learned Magistrate must take appropriate decisions on merits.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge